TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 221.

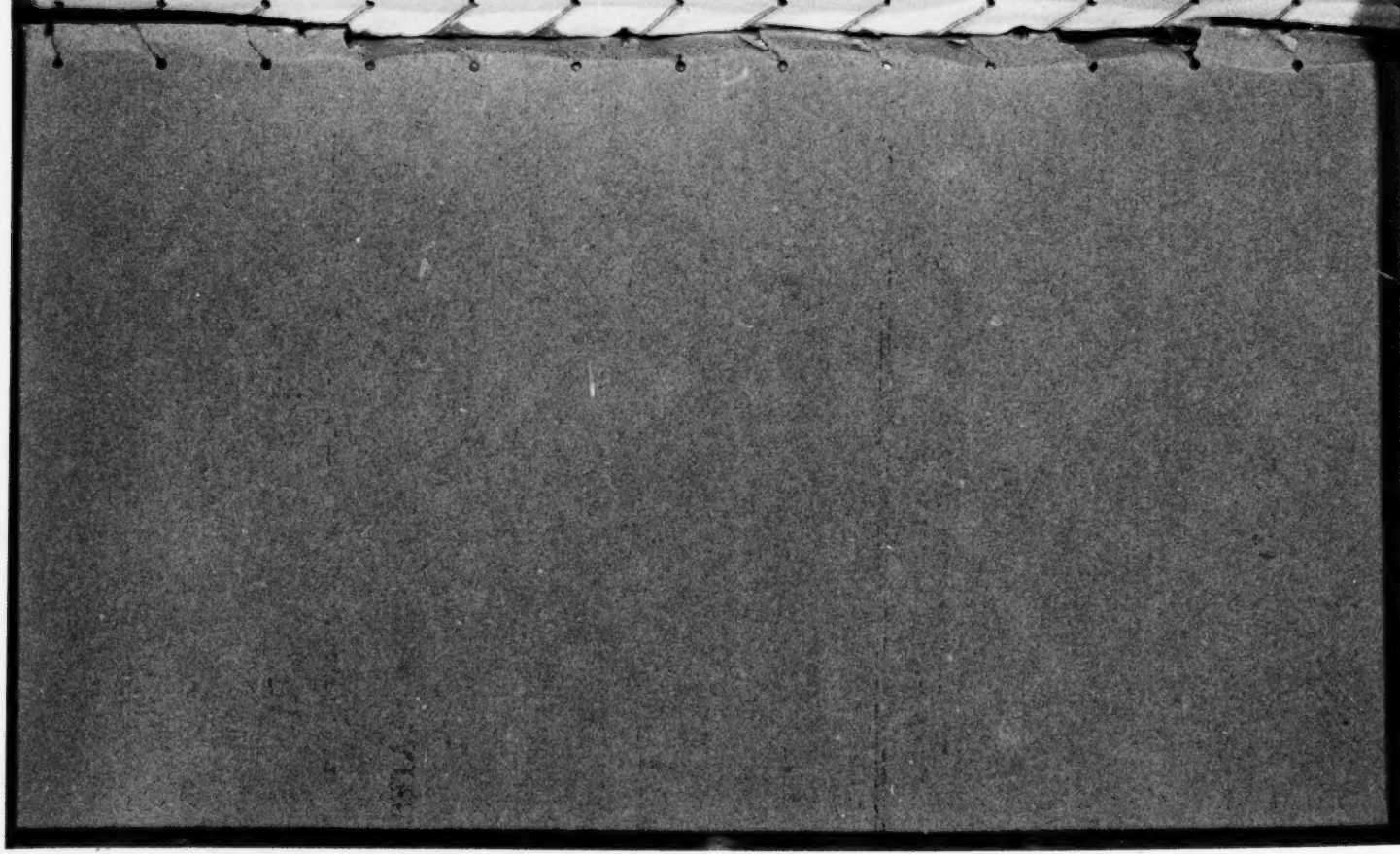
COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK, PETITIONER,

vs.

GITTEL GOTTLIEB AND ISRAEL GOTTLIEB.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1923.
CERTIORARI AND RETURN FILED MARCH 24, 1923.



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Writ of Habeas Corpus. 1

HIS EXCELLENCY, WARREN G. HARDING, PRESIDENT OF THE UNITED STATES OF AMERICA.

TO COMMISSIONER OF IMMIGRATION, at the Port of New York, or any other person having charge, custody or control of the bodies of GITTEL GOTTLIEB and ISRAEL GOTTLIEB, GREETING:

WE COMMAND YOU, that you have the bodies of GITTEL GOTTLIEB and ISRAEL GOTTLIEB 2

Hab. Corpus To Bring Up Person.

by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name they shall be called or charged before the United States District Court Southern District of New York, at the Court House Post Office Building, Broadway and Mail Street, Borough of Manhattan, City of New York, on the 19th day of January, 1922, at 10:30, A. M. 3

to do and receive what shall then and there be considered concerning them and have you then there this writ.

WITNESS, Hon. Learned Hand, U. S. District Judge the 18th day of January, one thousand nine hundred and twenty-two.

ALEX. GILCHRIST, JR.,
Clerk.

J. G. M. BROWNE,
Relator's Attorney.

4

The within Writ is hereby allowed.

Dated, Jan. 18, 1922.

(Sgd) J. W. MACK,
U. S. C. J.

Petition for Writ of Habeas Corpus.

UNITED STATES DISTRICT COURT,

5

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators, against THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW York, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.	M7/17.

6

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of Joshua Lerner, respectfully shows:

1. That he is a citizen of the State of New York, and of the United States of America, and is the General Secretary of the United Charity Institutions of Jerusalem, whose office is at #179 East Broadway, Borough of Manhattan, City of New York.

2. That your petitioner is acquainted with Rabbi Solomon Gottlieb, who is the husband of the above named Gittel Gottlieb, and who is also the father of the above named Israel Gottlieb.

3. That the said Solomon Gottlieb is now ill, and confined to his bed, by reason whereof he is unable to personally make this application, and for and on behalf as well of the above named relators, and your petitioner alleges that he has been duly authorized by the said Solomon Gottlieb to make this petition, and to apply to this Court for the writ of habeas corpus now sought on behalf of the relators, and hereby now applied for, and for the further reason that the relators, as your petitioner is informed, are now aboard the steamship "Rome," which is about to sail, and it is impossible in the interval to procure their signatures to the petition herein.

4. Your petitioner further alleges upon information and belief, that the above named Solomon Gottlieb is a legally admitted alien resident of the United States, and arrived in this Country from Palestine, Jerusalem about sixteen months ago, and that he now resides at #81 Avenue C, in the Borough of Manhattan, City of New York, Southern District of New York, and is engaged as a Rabbi of a Synagogue known as the Synagogue

10 Gewial Chesed, at #100 Cannon Street, in the Borough of Manhattan, City of New York, under contract for three years, at a salary of Two thousand Dollars ($2,000) per year, and duly filed his declaration to become a citizen of the United States of America.

5. Upon information and belief that the said Gittel Gottlieb is twenty-eight years of age, and the said Israel Gottlieb is five years of age.

11 6. Upon information and belief that the above named relators heretofore duly applied to the American Consul at Palestine, Jerusalem, for a vise of passport for permission to enter the United States of America, stating at the time that it was their purpose to come to the United States of America to permanently reside here with the said Solomon Gottlieb, and that he, the said Solomon Gottlieb had sent for them to come to this Country for such purpose, and that at such time the said Solomon Gottlieb was a legally admitted alien resident of the United States, and that the law
12 respecting the quota of aliens from said Country entitled to enter the United States had not then become effective.

7. Upon information and belief that subsequent to receiving such vise of passport, the relators sailed from Alexandria, Egypt, to Cherbourg, France, en route for the United States of America aforesaid, and were there arbitrarily and improperly detained so as to prevent them from sailing upon a vessel which would arrive in the United States of America prior to such quota being exceeded, and to thereby so detain them that upon

their arrival in the United States of America, such quota would then have been exceeded. 13

8. Upon information and belief that the above named relators arrived at the Port of New York, in the United States of America on the Steamship "Providence" of the Fabre Line, on or about the 27th day of December, 1921, and that after a hearing before the Board of Special Inquiry at Ellis Island, New York, they were ordered deported, upon the ground that the quota of immigrants entitled to be admitted to this Country had been exceeded. 14

9. Upon information and belief that the above named relators maintained before the said Board of Special Inquiry that their deportation upon said ground was unauthorized and improper, for the reason that at the time they had received their vise of passport entitling them to come to this Country, that the law respecting the quota had not become effective, and that they had been arbitrarily delayed and detained for the reasons aforementioned, and that their exclusion upon that ground was unlawful. 15

10. Upon information and belief that other aliens coming from the same Country, under the same conditions and upon the same vessel, were admitted into this Country upon their arrival here, by the said Board of Special Inquiry at the same time that the relators were excluded.

11. Upon information and belief that the said relators were never informed that they could enter this country under bond.

16

12. Upon information and belief that the said Board of Special Inquiry nevertheless excluded said relators, and that thereupon an appeal was taken from such determination, to the Secretary of Labor, and that the determination ordering such deportation was affirmed.

13. Upon information and belief that the decision affirming such determination of the Board of Special Inquiry was only received over the long distance telephone a short while ago, and that said
17 relators are now aboard the steamship "Rome" of the Fabre Line, which sails at 3 o'clock P. M., today.

14. Upon information and belief that the said Solomon Gottlieb is financially able to support and maintain the said relators, and that there is no likelihood of their becoming public charges.

15. Upon information and belief, your petitioner alleges that by reason of the facts and circumstances above set forth, that the determination of
18 the Board of Special Inquiry ordering the deportation of the said relators, and the affirmance of their determination by the Secretary of Labor, was and is an abuse of discretion and excess of power, for the reason that the provisions of the Immigration Laws are not applicable to the relators by reason of their relationship to the said Solomon Gottlieb as a legally admitted alien resident of the United States, as a Minister of the Jewish Faith, and for the reason that such detention to prevent the arrival of the relators in this Country prior to the quota aforesaid being exceeded, was a fraud upon the relators and in violation of their rights.

16. Upon information and belief that the said relators have not been committed or detained by virtue of a mandate issued by a Court or Judge of the United States, or by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause, nor for any act constituting a contempt of court, or by virtue of an execution or other process issued upon such judgment, decree or final order.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein, directing the respondent to have the bodies of the said Gittel Gottlieb and Israel Gottlieb, relators, together with the time and cause of their detention and deportation, by whatsoever name they shall be known, called or charged, before this Court, to show cause why the said relators should not be admitted into the United States of America, and to do and receive what is then and shall be considered concerning them.

That no previous application has been made.

Dated, New York, January 18th, 1922.

(Signed) J. LERNER,
Petitioner.

22

United States of America,
Southern District of New York, } ss.:

Joshua Lerner, being duly sworn, deposes and says: that he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

23

(Signed) J. LERNER.

Sworn to before me this
18th day of January, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 23007.
Bronx Co. Clk's No. 4; Reg. 2903.
Kings Co. Clk's No. 9; Reg. No. 3007.
Term expires Jan. 25, 1923.

24

Return to Writ of Habeas Corpus. 25

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, 26

Respondent.

Southern District of New York, ss.:

John M. Lyons, being duly sworn, says that he is and during all the times herein mentioned has been an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein. 27

In compliance with the direction of this Court, the bodies of the said aliens in their own proper persons are produced herewith before this Court at the time specified in the writ.

28

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said aliens are held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which
29 this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclu-
30 sion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegations of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the

31

above named aliens, copies of which are produced and filed herewith as part of this return;

(1) On December 30, 1921, the aliens herein, Gittel Gottlieb and Israel Gottlieb, were duly accorded a hearing before the Board of Special Inquiry held at Ellis Island, New York Harbor, New York. Upon the said hearing, proceedings were had, testimony taken and other evidence introduced as appears by the minutes of the said hearing, a copy of which is hereto annexed and made a part of this return. The said Board found that 32
the aliens herein were natives of Palestine and the Board unanimously and duly excluded the aliens herein as coming to the United States in violation of the Act of May 19, 1921, in that they are natives of a country, to wit, Palestine, whose quota has been filled.

(2) As appears by the minutes and exhibits aforesaid, the said aliens were duly informed and apprised of the charges against them; the said aliens were afforded a full, complete and fair hearing by the Department of Labor upon said charges; 33
the said aliens were afforded a full, complete and fair opportunity to answer and to submit evidence upon such charges; there was before the Department of Labor evidence to sustain each of said charges; the Department of Labor duly found that the charges were sustained; and said charges were in fact fully sustained by the proofs that were before and were considered by the Department of Labor.

(3) The proofs and record of the proceedings before mentioned having been duly transmitted to

34 him, the Secretary of Labor duly affirmed the excluding decision of the Board and directed the deportation of the said aliens on January 18, 1922; and for cause of the detention of the said aliens complained of in the petition herein, deponent says that the said aliens are and since the receipt of said warrant of deportation have been held under and in obedience to said warrant of deportation.

The respondent, upon information and belief denies each and every allegation of the petition herein except as to what is admitted in the return filed
35 herein.

WHEREFORE deponent prays that the writ of habeas corpus herein be dismissed and that the said aliens remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, to be dealt with in accordance with the said warrant of deportation.

JOHN M. LYONS.

Sworn to before me this
36 26th day of January, 1922.

SAML. M. HITCHCOCK,
U. S. Commissioner,
Southern District of New York.

37

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

Office of
Commissioner of Immigration
Ellis Island
New York Harbor, N. Y.

98824/792

January 5, 1922.

Commissioner-General of Immigration,
Washington, D. C.

38

In re: Gittel Gottlieb, 24, and child, Israel, 4. Natives of Palestine; where parents reside; reads; husband in U. S. paid passage; housewife; never in U. S.; going to husband and father, in New York City; ex SS "Providence" December 27, 1921, S. I. No. 10.

EXCLUDED; EXCESS PALESTINE QUOTA.

No attorney; brief of H. I. A. S. attached. Congressman L. W. Parish interested.

These aliens intended to go to the husband and father in New York City; he appeared in their behalf; he has resided here fourteen months, is a declarant, is rabbi of a congregation from which he derives an income of $2000 per year; he appears to have $950 in securities. 39

Mail decision; next sailing January 18th.

Affirm excluding decision.

(Sgd) H. R. Landis,
Assistant Commissioner,
BSI & Appeals.

L:FMP
Encl. No. 8612.
Copy FXK

40

N. Y. Form 192

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

157 LGS

NAMES OF ALIENS:
GOTTLIEB, GITTEL 24f-m
ISRAEL 4m-child
HEBREW-PALESTINE.

41

Before a
Board of Special Inquiry
held at
Ellis Island, New York Harbor, N. Y.

December 30, 1921, 11:10 a. m.

Present—Insps. MCCULLOUGH (Chmn).
Toner & Felstyner,
Int. Volovick.

SI 10—SS "Providence" Fabre Line, Dec. 27—
42 Marseilles.
Excess quota, Palestine—Insp. McGlynn. II Cabin.

ALIEN, sworn, testified:

Natives and residents of Jerusalem, Palestine where I have father Pinchas and mother Malke Schonberger, in good health.

Read; my husband Solomon in US paid passage; housewife; never in US.

43

Going to husband, 100 Cannon Street, New York City.

$25.00; teleg. to call, paid 35c.

Coming to join husband and remain permanently.

Passport for two issued by the Government of Palestine at Jerusalem, May 19, 1921, and vised at Jerusalem by American Consul, May 23, 1921, "vise good only for 60 days."

Never debarred or deported from the US or Canada.

44 Q. How long is your husband in the US? A. One year.

Q. Why did you not accompany him to America? A. We did not have enough money.

Q. Have you any other children? A. No.

Q. Has your husband contributed toward your support since he is here? A. Yes.

Q. Were you advised by the American Consul or any representative of the steamship company, that you might be denied admission to the US because the quota allotted to the country of your birth, had become exhausted? A. No.

45 Q. Why is it your passport shows a vise by the American Consul which was good only for sixty days? A. I did not get any explanation of this. They were all made that way.

Q. At the time you secured your passport at Jerusalem, did you state you were coming to the US to reside permanently? A. I was told at the American Consul that I must leave Palestine within 60 days if I want to make use of the vise. If I did not leave within that time, the vise will not be good.

Q. What was the date that you obtained your passport? A. First day of Sivon. (Interpreter

46 Volovick states this is about the end of May, or early part of June.) I departed from Jerusalem eight days after the vise of my passport and went to Alexandria, Egypt, where I was waiting for a ship to France.

Q. From Alexandria where did you go? A. To Marseilles and from there to Paris and then to Cherbourg.

Q. Why were you detained from June until December,—six months, in securing transportation to America? A. Our passage was delayed from
47 ship to ship, by the steamship companies who were telling us we could not go this month and told us to wait until next month and so put us off until now and I became disgusted and went to Marseilles and obtained passage on another steamship line.

Q. Did the steamship agents give any reason for putting you off? A. They were telling us that there was no room; on another occasion that we had to wait for the quota facilities and never gave us any good reason.

Q. Were you then not notified that the quota was exhausted from your native country? A. I was
48 told that in Cherbourg, after being detained so long. In Marseilles, to the same inquiry, I was told since my husband is a Clergyman, I could come to the United States.

(Shows letter from the Congregation Owiles Cheased, K. U. V., 100 Cannon Street, New York, dated May 10, 1921, indicating an agreement made between the Congregation, a religious corporation, and Rabbi Solomon Gottlieb, showing that he was to preach for the Congregation for a period of three years from date. He is to receive a salary of $2,000 and it is understood between both parties

49

that Rabbi Gottlieb shall bring his family to the United States within a period of six months from date. Signed, 10th day of May, 1921.

ALEX SPIRTZ, President.
Solomon Gottlieb,—Seal of Corporation.)

(Mr. S. F. Strothers, representing the Department of State makes the following statement:

The vise in question, No. 540, granted at Jersualem, and bearing notation that it is valid "for only sixty days," is at law, valid for one year, being in 50
fact a $10.00 vise. Consular officers have now been instructed by the Department of State not to limit these vises in terms such as this vise is limited.)

Witness, sworn, testified thru Int:

Q. What is your name? A. Solomon Gottlieb, 165 Attorney Street, New York, living care of Mr. Bach.

Q. For whom do you call? A. My wife and 51
child (names them).

Q. How long have you been in America? A. 14 months.

Q. Have you been contributing to the support of your wife and child? A. Yes.

Q. Did you write them to come and pay their passage? A. Yes.

Q. Have you declared your intention to become a citizen? A. Yes.

(Shows declaration of intention, No. 98474, in the name of the witness, issued in the Eastern District Court of the US, May 10, 1921.)

52

Q. What is your business or occupation? A. Rabbi in the Congregation at 100 Cannon Street, New York.

Q. What is your salary? A. $2,000 a year salary and besides other income.

Q. What money have you saved since coming here? A. $700 cash and $300 in Liberty Bonds. (Shows Check for $200 and $450 money.)

Q. Have you a home prepared for your family? A. Not yet, but my family will go to me at my friend's house where I now live and later I will

53 get an apartment.

Q. Why didn't your wife and child come with you to the US A. I did not have enough money.

Q. Had you been informed that natives of Palestine would not be permitted to enter, being in excess of the quota allotted to that country? A. When I sent the affidavits, the law of the quota had not been in effect and the vise was put on the passport before the law was enacted, so I did not know anything about them.

Q. If permitted to enter at this time, what would you do for them? A. I will establish a home for

54 my wife and child and support them.

Q. Will you send the child to school when it becomes of age, until it reaches 16 years? A. Yes.

Insp. Toner: I move that the aliens be EXCLUDED as coming to the US in violation of the Act of May 19, 1921, in that they are natives of a country whose quota has been filled.

Insp. Felstyner: I second the motion.

Chairman: Unanimous.

(To the alien, in presence of witness): You and your child have been excluded as coming to the US

55

in excess of the quota allotted to the country of your nativity. You have the right to appeal to the Hon. Secretary of Labor, to review the evidence taken here and decide whether you shall be admitted or debarred. His decision is final. Do you wish to appeal? A. Yes (Signs appeal).

Q. If deported, it will be at the expense of the steamship company which brought you here, in the same class that you arrived. Do you understand? A. Yes.

EXCLUDED AND ORDERED DEPORTED. 56

LOUIS G. SCHWARTZ,
Secretary.

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE.

Office of
Commissioner of Immigration
Ellis Island
New York Harbor, N. Y.

Ellis Island File No.
98824/792 57

January 18, 1922.

NOTICE OF DEPORTING DIVISION OF DECISION ON APPEAL.

In accordance with telephonic instructions from the Bureau dated Jan. 18, 1922, proceed as directed with the aliens described below:

S. I. No.	Steamship:	Action and Names:
10	Providence 12/27/21	Deport Gitel Gottlieb and child Israel

(Sgd.) H. R. Landis, Commissioner
in charge B. S. I. and Appeals.

58

Instructions to Messengers:

Deliver pink copy to Deporting Division and green copy to Information Division.

HCS
Copy FXK

Traverse.

59 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

60 Respondent.

Traverse to the Return to the Writ of Habeas Corpus.

United States of America,
Southern District of New York, } ss.:

Solomon Gottlieb, being duly sworn, deposes and says: That he is the husband of the above named relator Gittel Gottlieb, and the father of the above named relator Israel Gottlieb.

61

That heretofore and on the 18th day of January, 1922, as your deponent is informed and verily believes, upon a petition duly presented to this Court on behalf of the above named relators, the Hon. Julian W. Mack, Circuit Judge, duly issued a writ of habeas corpus directed to the above named respondent, to produce the relators before this Court pursuant to said writ. That pursuant to the said writ of habeas corpus, the respondent has made a return to this Court, and therein it is alleged, among other things, that the said relators, on December 30th, 1921, were afforded a hearing before 62
the Board of Special Inquiry held at Ellis Island, N. Y. H., and that upon the said hearing, proceedings were had, and that the said Board found that the relators were aliens and natives of Palestine, and were unanimously excluded as coming to this country in violation of the Act of May 19th, 1921, in that they are natives of a country, to wit, Palestine, whose quota has been filled. That the said relators were duly informed and apprised of the charges against them, were afforded a full, complete and fair hearing by the Department of Labor upon said charges, and an opportunity to an- 63
swer the same. That said charges were found to be sustained, and that the determination of the Board of Special Inquiry was affirmed by the Secretary of Labor, and that the relators are now held under a warrant of deportation.

Deponent on behalf of the relators traverses the return to the said writ of habeas corpus, and alleges that the said relators are unable to personally file said traverse for the reason that they are now detained at Ellis Island, and, as deponent is informed by relators' counsel, he has not been able to have

64 said relators personally traverse the said return, for which reason the same is made by deponent on their behalf.

Deponent challenges the return herein on the ground that the relators were not accorded a full, fair and complete hearing, as deponent is informed by the attorney for said relators, to wit, that the said relators were entitled to apply for temporary admission under bond, upon showing that such temporary entry is an urgent necessity, or that unusual and grave hardship would result from a de-
65 nial of their request, as provided by the 9th proviso of Section 3 of the Act of February 5th, 1917, and Subdivision 2 of Rule 16 of the Immigration Rules.

Deponent further alleges, upon information and belief, that the minutes of the hearing before the Board of Special Inquiry do not recite that the said aliens were informed of their right to temporary admission under bond, or of their right to show that an urgent necessity for such entry exists, and that grave hardship would result from a denial of their request.

AS AND FOR NEW MATTER, your de-
66 ponent alleges, on behalf of the said relators, that urgent necessity for their temporary admission under bond does exist, and that grave hardship would result from a denial thereof for the following reasons; that the said relators have not had any permanent place of abode ever since they left to come to the United States of America, after their application to have their passport vised by the United States Consul at Palestine, Jerusalem had been granted, and have travelled from Jerusalem to Alexandria, Egypt, from there to Marseilles, France, from there to Cherbourg,

France, and from there to the United States of America. That as a result thereof they have endured great inconvenience and great mental distress, and that if the said aliens are returned to Jerusalem, that they will have no place to go, as your deponent is informed by his wife, the relator Gittel Gottlieb, that she does not now know where her parents are, or where they may be found, and that she has no means wherewith to sustain herself and the infant relator Israel Gottlieb, and that there is grave danger that such return may impair their health and subject them to conditions beyond their control. 67 68

Deponent believes that if the said relators had been informed of their right to apply for temporary entry under bond, that upon these facts being called to the attention of the proper officials, that they would have been granted a temporary entry under bond, and that thereby the relators would have been enabled to be with deponent, and receive the comfort and protection of his society, and would be enabled to derive the benefits of family association, which have been denied them by reason of the failure of the Board of Special Inquiry to inform them of their right to apply for such temporary entry under bond. 69

Deponent therefore alleges that the exclusion of the relators, without their being accorded the said privilege, and for the reasons set forth in the petition, and the refusal to admit the said aliens under bond, that the issuance of the warrant of deportation was and is an abuse of discretion and an excess of power.

WHEREFORE deponent respectfully prays that the said writ be sustained, and the relators be per-

70 mitted to enter this country unconditionally, or, in the alternative, if the Court should determine that the said relators are not entitled to enter unconditionally, that they be permitted a temporary entry under bond, upon such terms and conditions as to the Court may seem just and proper in the premises.

SOLOMON GOTTLIEB.

Sworn to before me, this
26th day of January, 1922.

71

HARRY COHAN,
Commissioner of Deeds,
City of New York,
N. Y. Co. Clk's No. 19; Reg. No. 2007,
Bronx Co. Clk's No. 4; Reg. No. 3006,
Kings Co. Clk's No. 3; Reg. No. 3007,
Term expires Jan. 25, 1923.

72

Supplemental Traverse. 73

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators, against THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.	Supplemental Traverse to Return to Writ of Habeas Corpus. 74

United States of America,
Southern District of New York, } ss.:

75 Gittel Gottlieb, being duly sworn, deposes and says: That she is one of the above named relators, and that the relator Israel Gottlieb is her son, and is about five years of age.

An application was heretofore made on behalf of deponent and her said son, the said Israel Gottlieb, for a writ of habeas corpus, directed to the above named respondent, to show cause why your said relators should not be released and permitted to enter the United States, your relators having theretofore been ordered deported and placed upon the Steamship "Rome" for deportation.

76 That in the said petition for said writ of habeas corpus, it was, among other things, alleged, as deponent is informed by her attorney herein, that the relators were never informed that they could enter this country under bond, and in the traverse to the return to said petition, it is further set forth, as deponent is informed that urgent necessity for the temporary admission of the relators under bond exists, and that grave hardship would result from a denial thereof.

77 Deponent, on behalf of said relators, and supplementing the allegations set forth in the said traverse to the return in the respect aforementioned, further states that if the relators were not to be temporarily admitted under bond, that grave hardship would result, and that urgent necessity exists, because of the fact that deponent's parents are about sixty-five years of age, and that at the time that deponent left, they were without means of support, and deponent has not heard from them, although she wrote to them from Paris over three months ago, and the usual time for mail to arrive is about five or six weeks.

78 Deponent further states that the safety of persons of the Hebrew faith in Jerusalem is in great peril. That shortly before the relators left, there was an uprising at Jerusalem, usually called a Pogrom. That such uprising was directed exclusively against the Jewish population, and that many Jews were killed and wounded. That deponent saw many wounded persons of the Hebrew faith lying in the hospital, and lying on the streets, and that all the Jewish population in Jerusalem had to hide, together with their children, so as to escape the attack upon them, such attack being partici-

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pated in by Arabs and Turks. Deponent hid with her son, the said relator Israel Gottlieb, in a cellar, for three days, after which time the uprising subsided, and deponent immediately went to the American Consulate at Jerusalem, to have her passport vised.

Deponent further says that because of the conditions there, she was obliged to and did abandon all of her belongings, except a few personal effects. That she explained to the American Consul her desire to come to this country, and also to escape the said uprising, with which uprising the American 80
Consul was familiar.

Deponent further says that in the said uprising, Hebrew students were killed; that the Scriptures were burnt up, and that the Hebrew College was set afire, in consequence of which many persons were burnt to death, and some killed as they were fleeing from the building. That deponent saw many persons of the Hebrew faith lying dead on the streets.

That the conditons in Jerusalem are such that persons of the Jewish faith are afraid to walk upon the streets; that the doors and windows are barred, 81
and that no business was done at that time, and for some time prior thereto in the Jewish section there. That for the first two or three days of the uprising, nothing was done to suppress it. That most of the police are Arabs, and that they participated and helped in the said uprising. That the throwing of stones into the houses of persons in the Jewish quarter, and upon the persons themselves is a matter of frequent occurrence, and that pilfering is constantly going on. That the Arabs and Turks have attacked and ravished women and girls of the

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Hebrew faith, and that in the main, the Arab police have been the participants.

Deponent respectfully submits that the relators herein were greatly jeopardized by the failure of the Board of Special Inquiry to inform them of their right to apply for temporary admission under bond, for the reasons aforesaid, and further states that so far as deponent knows, the same conditions control, and that deponent and her infant son will run the same risk and danger in the event that they are obliged to return there.

83 Deponent further says that in support of the statements above set forth with regard to the statements as to conditions prevailing in Jerusalem, deponent has procured the affidavits of Solomon Mandel and Simon Schlesinger, which deponent annexes hereto, and makes a part of the supplemental traverse herein.

WHEREFORE, deponent respectfully prays that this supplemental traverse to the return to the said writ of habeas corpus may be considered by the Court.

84

GITTEL GOTTLIEB,
in Jewish.

Sworn to before me, this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
(Seal) City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 2007,
Bronx Co. Clk's No. 4; Reg. No. 3006,
Kings Co. Clk's No. 3; Reg. No. 3007,
Term expires Jan. 25, 1923.

85

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

86

United States of America,
Southern District of New York, } ss.:

Solomon Mandel being duly sworn, deposes and says: That he is 21 years of age. Deponent states that he knows the relator Gittel Gottlieb, and first became acquainted with her in Jerusalem, Palestine. 87

That your deponent is familiar with the conditions prevailing there, and that your deponent left Jerusalem on or about the 9th day of November, 1921, and arrived in the United States of America on or about December 10th, 1921, and that your deponent was permitted to enter the United States.

Deponent states that with regard to the conditions in Jerusalem, respecting the Jewish population there, that said conditions are such that it is absolutely unsafe for such persons to remain there. Deponent has known of two of the uprisings that have taken place in Jerusalem, and that deponent

88 actually saw several Jews slain by Arabs with knives. That deponent also saw buildings used by the Jews for religious purposes set on fire and destroyed. Deponent also saw many persons of the Hebrew faith lying wounded at the American Zionist Medical Corps Hospital at Jerusalem.

That robbery of the Jewish residents is frequent, and that women and girls of the Jewish faith have also been attacked and ravished. Deponent states that the conditions there are such that it is absolutely unsafe for persons of said faith to walk upon
89 the streets, and that business there is at a standstill because of the fear of attack. That such attacks are directed only against persons of the Jewish faith.

That about four or five days after the said uprising, deponent left to sail for the United States, and that conditions were so bad and grave that it was necessary to have official protection by way of escorting said persons to the pier where they were about to embark.

Deponent states that he has been informed that this affidavit has been sought for corroboration of
90 the allegations made by the said relator Gittel Gottlieb as to conditions prevailing in Jerusalem, and deponent therefore makes said affidavit to aid the Court, and without any other interest whatever in the application herein.

SOLOMON MANDEL.

Sworn to before me this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 23007.
Bronx Co. Clk's No. 4; Reg. No. 3003.
Kings Co. Clk's No. 9; Reg. No. 3007.
Term expires Jan. 25, 1923.

91

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

92

United States of America,
Southern District of New York, } ss.:

Simon Schlesinger, being duly sworn, deposes and says: That his occupation is that of Rabbi of the Jewish faith. That deponent is thirty-nine years of age. Deponent arrived in the United States on or about the 27th day of January, 1922, and was admitted to enter the country. Deponent came from Jerusalem leaving there about December 15, 1921. 93

Deponent states, that with respect to the conditions that prevail there regarding the Jewish population they are such that it is absolutely unsafe for persons of such faith to reside there. That there have, to deponent's knowledge, been two pogroms directed only against the persons of said faith, in

94 which the Arabs have participated. That persons of the Jewish faith have been killed and wounded. That deponent saw the dead bodies carried through the streets, the said persons having met their deaths through being stabbed. That a great number of persons of said faith were lying about wounded.

With respect to the pogrom which occurred in May, 1921, an attack was made upon the Hebrew College there, and that the same was burnt and totally destroyed. That robbery is of frequent occurrence and is directed only against persons of the
95 Jewish faith. That stores and residences have been pilfered and everything taken therefrom, and that the attacks are so frequent that the Jewish residents are obliged to live behind barred doors and windows.

That after the pogrom in May, 1921, the Jewish College was rebuilt, but in the pogrom which occurred in November, 1921, the College was destroyed by bombs and the Sexton stabbed to death. During the said attacks the Arabian police looked on without once interfering.

Deponent recalls specifically being informed of
96 an instance where a Jewish engineer was coming from the Court house in Jerusalem, and seeing the uprising requested police protection. That two Arabian police were assigned to escort him, and that when some of the Arabs attempted to attack him, he attempted to defend himself with a weapon which he had, but that the said Arabian police, instead of protecting him, took said weapon from him and permitted him to be very seriously injured.

That women and girls of said Hebrew faith have been attacked and ravished by Arabs without police interference, and that women and girls who have no

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men folks living with them are living in constant fear and terror. That during the pogroms, the conditions were such that the young men of the Jewish population kept guard in shifts during the night and day, to warn the populace of any impending attack, and that conditions are so bad that the Jewish population is actually sitting with their souls in their hands.

Deponent states that he has been informed of the application made by the relators herein for their release, and has been requested to inform this Court of such conditions as he knows have prevailed in 98
Jerusalem, and to that end deponent has made this affidavit to aid the Court, and with no interest whatever in the application herein, except as aforestated.

SIMON SCHLESINGER.

Sworn to before me this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 23007. 99
Bronx Co. Clk's No. 4; Reg. No. 3003.
Kings Co. Clk's No. 9; Reg. No. 3007.
Term expires Jan. 25, 1923.

100

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

101

United States of America,
Southern District of New York, } ss.:

102 Simon Samet, being duly sworn, deposes and says: That he is thirty-two years of age, and is a Rabbi by profession but is at the present time engaged as collector for the Universal Jewish Orphans Home for Girls in Jerusalem, which has its offices at #193 Henry Street, New York City.

Deponent states that he arrived in this country in or about July, 1920. That prior to that time deponent had resided in Jerusalem, and that with respect to conditions there prevailing regarding the Jewish population, deponent states that conditions are such that people of the Hebrew faith are living in fear of their lives.

Deponent was heretofore a student in a Jewish College at Jerusalem, and was one of the victims of the progrom which occurred in April, 1920. Every year it is a custom for the Arabians to parade to a Shrine at which they worship and on that occasion, deponent was on his way home from the College, when he was accosted by an Arabian police officer, who was a neighbor of his, and who advised deponent to seek shelter from the Arabians, as they were attacking any Jewish people whom they chanced to meet while on their way to the Shrine. Deponent was unable to return home immediately, owing to the fact that the Arabians were then coming in his direction, whereupon he sought shelter in the store of his brother-in-law. As deponent attempted to enter the store, several of the Arabians violently assaulted deponent, striking him with terrific force on the side of the head with an iron bar used to bolt the door of the store, and stabbing deponent in the leg with a knife. That deponent fell seriously injured and bleeding profusely. The pain was terrific, but deponent was warned not to moan for fear that it would arouse the Arabs to greater fury. Deponent's brother-in-law thereupon locked his store, in the meantime, upon the advice of an Arab friend, fled from the store and hid elsewhere. Deponent was then carried to another quarter of the City where deponent's brother-in-law had a friend, and while there seated on a chair receiving emergency treatment, deponent was again assailed by Arabs who beat him frightfully with sticks. An Arab officer happened to be present, and warned the assailants not to attack deponent, but they refused to do so, whereupon the officer drew his pistol and

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106 threatened to shoot, but did not do so; deponent's assailants in the meantime shouting "the Jews are dogs and Palestine is ours." Deponent further says that the Arabs then proceeded on to the Jewish quarter, robbing and destroying property of the Jewish populace, and ravishing women, and deponent knows two who were so attacked while their parents were away. Their brother attempted to defend them, but was struck on the head, splitting it open.

107 The attack upon the Hebrew populace was of such a vicious character that in one instance, as deponent is informed, a Jewish student, who attempted to defend himself from the Arabs, was found lying dead on the street, with numerous nails hammered into his head. Deponent further says that he also learned that an English officer, who was a Jew, had also been slain.

Deponent was taken to the hospital to be treated for his injuries, and there learned that the attack lasted for three days, and was of so severe a character that 220 persons of the Jewish faith were wounded and 11 killed.

108 Deponent states that he is married and has a wife and four children who he left in Jerusalem, and that he has received a letter from his wife, informing him that since the time of the progrom in which deponent was injured, there have been two other progroms of such violence, that the people of the Jewish faith have been obliged to flee, and that deponent's wife was obliged to flee from the City and compelled to hide for three days.

Deponent further says that as a result of the injuries which he sustained at the time of the progrom aforementioned, he has been rendered per-

manently deaf, and is still suffering from the stab wounds. 109

Deponent further says that he has been informed of facts relating to the conditions prevailing in Jerusalem, which have been submitted to the Court upon the application of the relators herein, and has been requested to make this affidavit for the purpose of informing the Court as to the conditions which he knows of his own personal knowledge, and aiding it with respect to the determination of the application of the relators herein, and deponent further says that he has no interest in 110 the application herein, other than to put before the Court the facts as to conditions prevailing there as aforesaid.

SIMON SAMET.

Sworn to before me, this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 25507. 111
Bronx Co. Clk's No. 4; Reg. No. 3003.
Kings Co. Clk's No. 9; Reg. No. 5007.

112 **Opinion.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

113 THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

J. G. M. BROWNE, Attorney for Relators; J. G. M. Browne, B. E. Kopelman, of Counsel.

114 WILLIAM HAYWARD, U. S. Attorney, Attorney for Respondent; John Holley Clark, Jr., James C. Thomas, Jr., Assistant U. S. Attorneys; John M. Lyons, of Counsel.

MEMORANDUM OPINION.

MACK, Circuit Judge:

The relators are the wife and child of a resident of the United States who had declared his intention to become a citizen of the United States, and who, at the time of their arrival in this country,

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was the minister of a congregation at a salary of $2,000 per year.

The sole ground of exclusion was that the quota allowed to their native land had been exceeded long prior to their arrival.

The American Consul had vised their passports a few days after the Act of May 19, 1921, had been passed and before it went into effect.

(1) The issuance of the passport and the granting of the vise gave to the relators no vested rights. Under the law their admissibility depend- 116
ed upon the situation at the time of the arrival in this country. The language of the law is clear; the power of Congress in this respect is not questioned.

(2) The Immigration Act of February 5, 1917, is the controlling law. Section 4 of the Act of May 19, 1921, expressly provides "that the provisions of this Act are in addition to and not in substitution for the provisions of the Immigration Laws." Under Section 3 of the Act of February 5, 1917, neither ministers nor their legal wives or 117
children under sixteen who accompany them, or who subsequently apply for admission to the United States, are within the exclusion provisions.

Under the Act of May 19, 1921, Section 2D, ministers of any religious denomination are excepted from the quota provisions.

The question before me is whether, fairly interpreted, the Act of 1921 is to be construed so as to limit the exemption to ministers, or more broadly so as to include, as does the Act of 1917 in express words, the legal wife or children under sixteen years of age, of a minister.

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In my judgment, the entire scope of the legislation prevents the narrow interpretation. The separation of a man from his family is concededly a great hardship and dangerous to the welfare of society. The reasoning of the Supreme Court, in *Holy Trinity Church* vs. *U. S.*, 143 U. S., 457, 461, is applicable here. I believe that the Act of 1921, interpreted in the light of the controlling Immigration Act of 1917, should be construed so as to include within the exceptions from the quota provisions the wife and children under sixteen of a

119 minister, as well as the minister himself.

It is, therefore, unnecessary to pass upon the other contentions. The relators will be discharged.

March 3, 1922.

J. W. MACK,
U. S. Circuit Judge.

120

Order Sustaining Writ. 121

At a Term of the District Court of the United States, for the Southern District of New York, held at the Court House, in the Post Office Building, Broadway and Mail Street, said District, on the 13th day of March, 1922.

Present—Hon. JULIAN W. MACK, Circuit Judge.

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ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.

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The petition of Joshua Lerner, dated and verified, respectively, the 18th day of January, 1922, having been duly presented to this Court on said day, praying that a writ of habeas corpus issue herein, directing the respondent to have the bodies of the above named relators Gittel Gottlieb and Israel Gottlieb, together with the time and cause of their detention and deportation, by whatsoever name they shall be known, called or charged, be-

124 fore this Court, to show cause why the said relators should not be admitted into the United States of America, and to do and receive what is then and shall be considered concerning them, and this Court having upon said petition duly issued and allowed its writ of habeas corpus on the said 18th day of January, 1922, directed to the above-named respondent, and the said relators having been duly produced before this Court by the said respondent, in obedience to the command of the said writ, and application having been duly made to this Court
125 for the admission and release of the relators from the custody of the respondent pending the determination of this proceeding, and said application having been granted, and an order duly made and entered on the 4th day of February, 1922, admitting and releasing the said relators from such custody pending such determination, and pursuant to the said order, the said relators having duly filed in the office of the Clerk of this Court a bond of the Fidelity & Deposit Company of Maryland, in the sum of One thousand Dollars ($1,000), executed the 3rd day of February, 1922, and duly ap-
126 proved on the 4th day of February, 1922, and the said relators having accordingly been released and admitted,

NOW, after reading and filing the petition of Joshua Lerner, dated and verified as aforesaid, the writ of habeas corpus, dated and issued as aforesaid, the affidavit of John M. Lyons, verified the 26th day of January, 1922, constituting the return of the respondent to said writ, and the affidavit of Solomon Gottlieb, duly verified the 26th day of January, 1922, constituting the traverse to the return to said writ, and the affida-

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vits of Gittel Gottlieb, Solomon Mandel, Siman Schlesinger and Siman Samet, all duly verified the 8th day of February, 1922, constituting the supplemental traverse to the return to said writ,

NOW, after hearing Joseph G. M. Browne, attorney for the relators (Joseph G. M. Browne and Barnett E. Kopelman, of Counsel) in support of said writ, and William Hayward, United States Attorney, Southern District of New York (John Holley Clark, Jr., James C. Thomas, Jr., Assistant United States Attorneys, and John M. Lyons, of
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Counsel) for the respondent, in opposition thereto, and after due deliberation having been had thereon, and upon filing the opinion of the Court, it is, on motion of Joseph G. M. Browne, attorney for the relators

ORDERED AND ADJUDGED that the said writ of habeas corpus be and the same hereby is in all respects sustained; and it is further

ORDERED that the relators be and they hereby are released and discharged from the custody of the respondent, and are hereby admitted into the United States of America; and it is further
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ORDERED AND ADJUDGED that the bond given by the said Fidelity & Deposit Company of Maryland, executed on the 3rd day of February, 1922, in the sum of One thousand Dollars ($1,000), and approved on the 4th day of February, 1922, as aforesaid, be and the same hereby is cancelled and discharged, and the said Fidelity & Deposit Company of Maryland be and it hereby is in all respects and things released and discharged from any and all liability thereon.

JULIAN W. MACK,
Circuit Judge.

130 **Assignment of Errors.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relator-Appellees, against 131 THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent-Appellant.	M 7/17.

NOW comes the respondent in the above entitled cause and files the following assignment of
132 errors upon which he will rely upon the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this Court on the 13th day of March, 1922.

FIRST.—That the United States District Court erred in sustaining the writ of habeas corpus herein.

SECOND.—That said Court erred in holding that the Act of May 19, 1921, properly construed, should include within the exceptions from the

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quota provisions, the wife, and children under sixteen years of age of a minister.

THIRD.—That said Court erred in holding that the Secretary of Labor could not exclude from admission to the United States, the wife, and children under sixteen years of age of a minister, under the Act of May 19, 1921.

FOURTH.—That the Court erred in holding that the Secretary of Labor did not have jurisdiction to order the alien Gittel Gottlieb and her son 134
Israel Gottlieb to be deported to the country whence they came.

FIFTH.—That the Court erred in failing to dismiss the writ of habeas corpus and remanding the relators to the custody of the Commissioner of Immigration at the Port of New York.

WHEREAS, by the law of the land, the said writ of habeas corpus should have been dismissed and the relator-appellee should have been remanded to the custody of the respondent-appellant, the 135
said Robert E. Tod, Commissioner of Immigration at the Port of New York, appellant, by his attorney William Hayward, United States Attorney for the Southern District of New York, prays that for the errors aforesaid and other errors in the record and proceedings, the judgment and decision aforesaid made on the 13th day of March, 1922, may be reversed and for naught held and esteemed, and that the said writ of habeas corpus herein be dismissed and the relator-appellee remanded to the custody of the respondent-appellant, and for such

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other and further relief as may be proper in the premises.

Dated, New York, April 27, 1922.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Appellant,
Office and P. O. Address,
U. S. Courts and P. O. Bldg.,
Borough of Manhattan,
137 City of New York.

Petition for Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,
Relators-Appellees,
138 against
THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,
Respondent-Appellant.

M 7/17.

The petitioner, Robert E. Tod, Commissioner of Immigration at the Port of New York, by his

attorney, William Hayward, United States Attorney for the Southern District of New York, feeling aggrieved by the order and judgment made on the 13th day of March, 1922, by this Court, sustaining the writ of habeas corpus herein, does hereby appeal from the said order and decision of this Court to the United States Circuit Court of Appeals for the Second Circuit, and prays that this appeal may be allowed and that a transcript of the record of proceedings and papers upon which the said order and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, April 27, 1922.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Appellant,
Office and Post Office Address,
U. S. Courts and P. O. Bldg.,
Borough of Manhattan,
City of New York.

142 **Order Allowing Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators-Appellees, against 143 THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent-Appellant.	M 7/17.

On reading the petition of Robert E. Tod, Commissioner of Immigration at the Port of New York, made by William Hayward, United States 144 Attorney for the Southern District of New York, his attorney, on his behalf, dated March 13th, 1922, for appeal and consideration of the assignment of errors presented therewith, it is

ORDERED that the appeal herein be allowed as prayed for, and it is

FURTHER ORDERED that a certified transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated, New York, May 13, 1922.

J. W. MACK,
U. S. Circuit Judge.

Citation on Appeal. 145

By the Honorable JULIAN W. MACK, U. S. Circuit Judge.

To Gittel Gottlieb and Israel Gottlieb, Relators.

GREETING

YOU ARE HEREBY CITED and admonished to be and appear before a UNITED STATES CIRCUIT COURT OF APPEALS for the Second Circuit, to be holden at the Borough of Manhattan in the City of New York, in the District and 146
Circuit above named, on the 12th day of June, 1922, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Robert E. Tod, Commissioner of Immigration of the Port of New York, is appellant and you are appellees to show cause, if any they be, why the order and judgment in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

GIVEN UNDER MY HAND at the Bor- 147
ough of Manhattan, in the City of New York, in the District and Circuit above named, this 13th day of May, in the year of our Lord One Thousand Nine Hundred and twenty-two and of the Independence of the United States the One Hundred and forty-sixth.

J. W. MACK,
U. S. Circuit Judge.

148 **Stipulation on Appeal Record.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators, vs. 149 THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.	M 7-17.

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a true transcript 150 of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, June 1, 1922.

J. G. M. BROWNE,
Attorney for Relators.

WM. HAYWARD,
U. S. Attorney,
Attorney for Respondent.

Clerk's Certificate. 151

United States of America,
Southern District of New York, } ss.:

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,
Relators,
vs.
THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,
Respondent.

M 7-17. 152

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties. 153

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 1st day of May, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

ALEX. GILCHRIST, JR.,
Clerk.

35516

52 United States Circuit Court of Appeals for the Second Circuit.
No. 72—October Term, 1922.

Argued October 20, 1922. Decided November 17, 1922.

UNITED STATES OF AMERICA, EX REL., Gittel Gottlieb and Israel Gottlieb, relators-appellees,

against

THE COMMISSIONER OF IMMIGRATION OF the port of New York, or other person having charge, custody, or control of the bodies of the above-named Gittel Gottlieb and Israel Gottlieb, respondent-appellant.

Appeal from the District Court of the United States for the Southern District of New York. Before Rogers, Manton, and Mayer, circuit judges.

Joseph G. M. Browne, for relators-appellees; Joseph G. M. Browne, Barnett E. Kopelman, of counsel.

William Hayward, United States attorney, for appellant; James C. Thomas, jr., assistant United States attorney, of counsel.

This is an appeal from an order entered in the United States District Court for the Southern District of New York on March 13, 1922.

53 This appeal is from an order sustaining a writ of habeas corpus and directing that the relators, who had been ordered deported from the United States, and were in the custody of the Commissioner of Immigration at the port of New York pending such deportation, be released and discharged from custody and that they be admitted into the country.

It appears that the relators are natives of Palestine, Jerusalem. The relator Gittel Gottlieb is 28 years of age and the wife of Solomon Gottlieb, a rabbi of a synagogue in the city of New York, who is receiving a salary of two thousand dollars a year. The relator Israel Gottlieb, whose age upon arrival was stated to be four years, is the child of Solomon and Gittel. The husband and father of these relators came to the United States from Palestine about fourteen months before the arrival of his wife and child, and was duly admitted. Prior to the arrival of the relators he had declared his intention to become a citizen. At the time he came to the United States his wife and child did not accompany him because he did not then have money enough to bring them. Later he sent them money to pay their passage, and wrote them to join him here. In the meantime he was contributing money for their support.

Upon the arrival of the relators at the port of New York they were given a hearing before a board of special inquiry, which excluded them on the ground that they came to the United States in violation of the act of May 19, 1921, in that they are natives of a

country whose quota has been filled. The case was then taken to the Department of Labor and the Secretary of Labor affirmed the decision of the board and directed the deportation of the aliens on January 18, 1922.

Thereupon the general secretary of the United Charity Institutions of Jerusalem, which maintains an office in the city of New York, acting for Solomon Gottlieb, the husband of one and the father of the other of the relators, who was confined to his bed by illness, petitioned for a writ of habeas corpus against the Commissioner of Immigration at the port of New York, in whose custody the relators
54 then were. The writ was granted, and after the return and p. hearing thereon the writ was sustained and the relators were ordered discharged on March 3, 1922.

ROGERS, circuit judge (after stating the facts as above):

The question presented by this appeal involves a novel and important question under the immigration exclusion act. If the immigration authorities are right in their understanding of the act, under which the relators have been denied a right to enter the country, a wife and child of a minister, resident in the United States, must be separated from him and returned to the country from whence they came. And the conditions said to prevail in that country as to persons of their particular faith seem to be such as to make their deportation one of unusual hardship.[1]

In deciding the question presented it is necessary to ascertain the intention of Congress as it is found in the immigration acts. For if Congress has declared that aliens situated as these relators are
55 can not enter they must be excluded even if the courts think their exclusion in any particular case would work extreme hardship and even great injustice. It is for Congress and not for the courts to determine what classes of aliens shall enter the United

[1] An affidavit in the record made by one who left Jerusalem on November 9, 1921, is as follows: "Deponent states that with regard to the conditions in Jerusalem, respecting the Jewish population there, that said conditions are such that it is absolutely unsafe for such persons to remain there. Deponent has known of two of the uprisings that have taken place in Jerusalem, and that deponent actually saw several Jews slain by Arabs with knives. That deponent also saw buildings used by the Jews for religious purposes set on fire and destroyed. Deponent also saw many persons of the Hebrew faith lying wounded at the American Zionist Medical Corps Hospital at Jerusalem.

"That robbery of the Jewish residents is frequent, and that women and girls of the Jewish faith have also been attacked and ravished. Deponent states that the conditions there are such that it is absolutely unsafe for persons of said faith to walk upon the streets, and that business there is at a standstill because of the fear of attack. That such attacks are directed only against persons of the Jewish faith.

"That about four or five days after the said uprising deponent left to sail for the United States, and that conditions were so bad and grave that it was necessary to have official protection by way of escorting said persons to the pier where they were about to embark.

"Dependent states that he has been informed that this affidavit has been sought for corroboration of the allegations made by the said relator Gittel Gottlieb as to conditions prevailing in Jerusalem, and deponent therefore makes said affidavit to aid the Court, and without any other interest whatever in the application herein."

States and in what numbers. The duty of the judges, as Lord Bacon said, is jus dicere not jus dare.

The immigration act of February 5, 1917, which is the basic act on this subject, enumerates, in section 3, certain classes of aliens who can not be permitted to enter the United States. The section then goes on to provide that the exclusion clause is not to apply to ministers, nor to their legal wives, nor their children under sixteen years of age who accompany them, or who subsequently may apply for admission to the United States. The provision referred to is as follows:

"The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the
56 United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted class shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act."

The act of 1917 has not been repealed. Whether the above provision has been impliedly repealed by the act now to be considered is an important question which must be determined.

The act of May 19, 1921, which is entitled "An act to limit the immigration of aliens into the United States" limits in section 2 the number of aliens of any nationality who may be admitted in any fiscal year to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910.

It is admitted that at the time the relators arrived in this country the number of aliens from Palestine entitled to enter had reached the 3 per centum to which that country was entitled under the above provision for the fiscal year. It was for that reason that these relators were excluded.

But it is also to be had in mind that the act of 1921 provides in section 4: "That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws." And it is claimed that because of section 4 in the act of 1921 there is no repeal of that part of section 3 of the act of 1917, above quoted, which provides that the exclusion clauses do not apply to ministers, nor their wives, nor their children under sixteen years of age who accompany them.

But it becomes necessary to consider certain other provisions in the act of May 19, 1921, which are equally involved herein. This act of 1921 in section 2a provides as follows:

"That the number of aliens of any nationality who may be admitted under the immigration laws of the United States in any fiscal

year shall be limited to 3 per centum of the number of foreign-
57 born persons of such nationality resident in the United States as determined by the United States census of 1910. * * *"

The section then goes on to state that in reckoning the percentage limits certain specified classes of persons shall not be counted.

And section 2d of the act provides as follows:

"When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded: * * *"

It then provides that certain specified classes of aliens and among them "ministers of any religious denomination" may be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same fiscal year shall have entered the United States. It makes no mention, however, of the wives or children of such ministers. The failure to mention them in the act of 1921 while they are named in the act of 1917 led to the exclusion of the relators and causes whatever doubt exists as to their right of entry.

In construing these statutes it is of course the duty of the court to endeavor to ascertain the intention and policy of Congress in the enactment of the legislation in question, and then to make practical application of that intention to the facts of this case. The fundamental rule of interpretation is that a statute is to be expounded "according to the intent of them that made it." (4 Inst. 330; Sussex Peerage 11 Cl. & F. 143.)

The act of February 5, 1917, and that of May 19, 1921, are statutes in pari materia and are to be read together as constituting one law. All statutes relating to the same subject being in pari materia are to be construed together as if they formed part of the same statute and were enacted at the same time. (Potter, Dwar. St. 145;
58 Board of Commissioners v. Ætna Life Ins. Co., 90 Fed. 222, 227.) The two acts are in pari materia and must be read together, and as was said in United States v. Munday (22 U. S. 175, 184), "no part of the previously existing law upon the same subject is to be regarded as inoperative unless no other construction of the later legislation is reasonable."

It is not to be lost sight of that it is one of the cardinal rules of construction that effect is to be given, if possible, to every word, clause, and sentence of the statute. (United States v. Ninety-nine Diamonds, 139 Fed. 961.)

In Maxwell on the Interpretation of Statutes (fifth ed., 325) the rule is correctly stated as follows:

"Whenever the language of the legislature admits of two constructions, and if construed in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words."

The rule thus stated is supported by many cases decided in the English courts which are cited by the writer of the treatise above quoted.

There are numerous instances in which the courts of this country, Federal and State, have applied the rule in the construction of doubtful statutes.

A construction of a statute which would lead to an absurd result is to be avoided if possible. Thus in United States v. Mrs. Gue Lim (176 U. S. 459) it was held that the wife of a Chinese merchant entitled by treaty to come into this country and dwell here was entitled to enter also and that she could not be required to furnish the certificate required by the statute from Chinese persons other than laborers "as such construction of the statute would lead to absurd results," and it was held that the act was never intended to exclude the wife and minor children of a merchant lawfully entitled to enter.

In cases where the proper construction of a statute is doubtful, arguments from the absurdity or injustice of a proposed construction may properly be considered. The Supreme Court has
59 frequently recognized the rule that where a particular construction of a statute will occasion great inconvenience or produce injustice that view is to be avoided if another and more reasonable interpretation is present in the statute. (Knowlton v. Moore, 178 U. S. 41, 77; Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 37; Blake v. National Banks, 23 Wall. 307, 320; Wilson v. Rousseau, 4 How. 646, 680; Bloomer v. McQuewan, 14 How. 539, 553.) And in Lau Ow Bew v. United States (144 U. S. 47, 59) Chief Justice Fuller, speaking for the court, said:

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and if possible, so as to avoid an unjust or an absurd conclusion."

In the well-known case of Church of the Holy Trinity v. United States (143 U. S. 457) the Supreme Court construed the act of February 26, 1885, which in terms prohibited the importation and migration of aliens "under contract or agreement to perform labor" in the United States. Trinity Church in the city of New York had made a contract with an alien minister residing in England by which he was to remove to New York and enter into its service as rector. It was claimed that this came within the terms of the statute and the court below so held (36 Fed. 303). The Supreme Court, however, reversed the judgment below. It held that although the case came within the letter of the statute, it was not within the intention of the Congress and therefore could not be within the statute. The court, speaking through Justice Brewer, said:

"It is a familar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legisla-

tor, for frequently words of general meaning are used in a
60 statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

The court in the above case went much further than we are called upon to go in the instant case, which we regard as within both the letter and spirit of the statute construing both acts as one.

Keeping in mind the above rules of interpretation, we construe the acts of 1917 and 1921 as one statute, the second act being, as provided therein, an addition to and not a substitute for the first act. The effect of the second act is to add to the classes excluded under the original act an additional class to those previously excluded, but it does not deprive those to whom a right of entry was expressly given in the first act of the right so granted. Neither the letter nor the spirit of the second act calls for a construction imputing to Congress the intention to create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family. An interpretation which would exclude the wife and children would be based on a consideration of the second act taken alone. But it can not be construed alone, but must be interpreted upon a general survey of both acts in all their parts. And when so interpreted, we think the right of entry given in the first act to the wife and children of a minister has not been withdrawn because of anything to be found in the second act. If Congress intended to admit the minister but to exclude his wife and children, it has failed to indicate it by any clear and sufficiently definite specific provision which justifies us in holding that the right expressly granted in the unrepealed act of 1917 has been withdrawn.

The order sustaining the writ of habeas corpus and ordering the release and discharge of the relators Gittel Gottlieb and Israel Gottlieb from the custody of the respondent is affirmed.

61 At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court rooms in the Post Office Building in the city of New York, on the 24th day of November, one thousand nine hundred and twenty-two.

Present: Hon. Henry Wade Rogers, Hon. Martin T. Manton, Hon. Julius M. Mayer, circuit judges.

UNITED STATES, EX REL. GITTEL GOTTLIEB AND ISRAEL Gottlieb, relators-appellees,
v.
COMMISSIONER OF IMMIGRATION, ETC., RESPONDENT-appellant.

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

M. T. M.
J. M. M.

62 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. U. S., ex rel. Gottlieb, v. Commissioner of Immigration, etc. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 23, 1922. William Parkin, clerk.

63 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 62, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of United States, ex rel. Gittel Gottlieb and Israel Gottlieb, relators-appellees, against Commissioner of Immigration, etc., respondent-appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 26th day of January, in the year of our Lord one thousand nine hundred and twenty-three, and of the independence of the said United States the one hundred and forty-seventh.

[SEAL.] WM. PARKIN, *Clerk.*

64 *Writ of certiorari and return filed March 24, 1923.*

UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:*

Being informed that there is now pending before you a suit in which the Commissioner of Immigration of the port of New York, etc., is appellant, and the United States of America, ex rel. Gittel Gottlieb and Israel Gottlieb, are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of

New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the
65 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable William H. Taft, Chief Justice of the United States, the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-three.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

66 [File indorsement omitted.]

67 In the Supreme Court of the United States. October term, 1922.

COMMISSIONER OF IMMIGRATION OF THE PORT OF New York, petitioner,
v.
GITTEL GOTTLIEB ET AL., RESPONDENTS.
No. 855.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Second Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
J. G. M. BROWNE,
Counsel for Respondents.

MARCH 15, 1923.

68 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, March 21, 1923.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

69 [File indorsement of Circuit Court omitted.]

71 [File indorsement of Supreme Court omitted.]

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